

IN THE DISTRICT COURT OF THE
UNITED STATES FOR THE MIDDLE
DISTRICT OF ALABAMA
EASTERN DIVISION

RECEIVED
CHRISTOPHER M SCULLY, AUG 17 A 9:43
PETITIONER, * CASE NO. 3:01-CV-26-MEF

J. R. HACKETT, CLERK
U.S. DISTRICT COURT
MIDDLE DISTRICT ALA

VS.
DANIEL JONES, RESPONDENT, *

RESPONSE TO ANSWER OF ATTORNEY GENERAL'S SECOND
EQUITABLE TOLLING CLAIM SUPPLEMENTAL

COMES NOW THE PETITIONER WITHIN RESPONSE
TO THE ATTORNEY GENERAL'S SECOND SUPPLEMENTAL
ANSWER.

ARGUMENT

PETITIONER CHRISTOPHER MCGULLAGH IS ENTITLED TO EQUITABLE TOLLING UNDER THE CIRCUMSTANCES OF THIS CASE PROVEN BY INDEPENDENT EVIDENCE.

ABOVEDMENTED IN AN PREVIOUS RESPONSE IS THAT THE CIRCUIT COURT DID NOT ACKNOWLEDGED, OR NOTIFY PETITIONER OF THE FINAL DECISIONS OF THESE POST CONVICTION RULE 32'S, ON WHICH PETITIONER ESTABLISHED AN ACTY FOR PROCEDURAL DEFAULT AND HAS PROVEN BEYOND A SHADOW OF A DOUBT THAT I WAS INDEED PREJUDICED BY THIS DEFAULT. AN VIOLATION OF FEDERAL LAW UP UNDER THE CONSTITUTIONS 6TH AMENDMENT ASSISTANCE OF COUNSEL. AND IT AN ESTABLISHMENT OF INEFFECTIVE ASSISTANCE OF COUNSEL IS ADMINISTERED IT IS THE PETITIONERS JOB TO PROVE THAT THIS ATTORNEY PERFORMANCE AT TRIAL WAS DEFICIENT AND I HAVE PROVEN THAT BY NOT CHALLENGING OR DISPUTING THE CORROBORATE EVIDENCE AT TRIAL SHOWS THAT HIS REPRESENTATION FELL BELOW AN OBJECTIVE STANDARD OF REASONABLENESS AND THIS EXACT PERFORMANCE RESULTED IN ACTUAL PREJUDICE BECAUSE IT DENIED ME THE RIGHT FOR REVIEW ON APPEAL.

DOUBLE JEOPARDY 133 5TH AMENDMENT
TO CONVICT AND SENTENCE DEFENDANT FOR TWO OFFENSES, CHARGED UNDER SAME STATUE AND ARISING OUT OF ONE ACT, U.L.LATES GUARANTEE AGAINST BEING PLACED IN DOUBLE JEOPARDY, WHICH PROTECTS DEFENDANT FROM BEING SUBJECTED TO MULTIPLE PUNISHMENTS FOR SAME OFFENSE

U.S.C.A CONST. ART. V ROLLING U.S. STATE, 673

SO. 2D 812, 814 (ALA.COURT APP. 1985.)

THE PETITIONER SWORN AFFIDAVIT AND
NUMBERLESS OF EXHIBITS OF FURTHER PROVEN THAT EVERYTHING
HE HAS SAID DEALING WITH THESE CASES ARE TRUE AND EXACT.
THE EXHIBITS THAT I PRODUCED CONTRADICTS MR. CHARLES
STORY AFFIDAVIT AND MRS. JANIE OLIVER AFFIDAVIT.
ALL FACTS THAT I PRODUCE TO THIS COURT ARE GENUINE
AND NOT FABRICATED.

I HAVE DEMONSTRATED THAT I AM ENTITLED TO
COURT TABLE TOLLING. ANYTHING FILED IN CRIMINAL
COURT DEALING WITH THE INSTANT CASES IS DEEMED
APPROPRIATE AND IS IN PROPER FORM FOR REVIEW AND ANY
FINAL DECISIONS ON ANY MOTIONS OR WRITS OF THESE
INSTANT CASES ARE APPEALABLE, THEREFORE THE ISSUES
OF THESE EXTRAORDINARY WRITS ARE DEEMED VALUEABLE
ON THEIR FACE AND CANNOT BE OVERLOOKED.

A STATE PRISONER CAN OVERCOME A PROCEDURAL DEFAULT
AND THUS PROCURE FEDERAL HABEAS CORPUS REVIEW
OF HIS BARRED CLAIMS, IF HE CAN DEMONSTRATE CAUSE
FOR THE DEFAULT AND ACTUAL PREJUDICE AS A RESULT
OF THE ALLEGED VIOLATION OF FEDERAL LAW.

I HAVE UNDISPUTABLY DONE THAT. (SEE PAGE 2)
THE CHAMBERS COUNTY CIRCUIT CLERK HAS VERIFIED
THAT HE HAS NOT RECEIVED THE
FINAL NOTICE BY WRITTEN ORDER OF THE RULE 32¹⁵
IN HIS AFFIDAVIT, BY DISCLOSING IN HIS SWEORN
AFFIDAVIT THAT THERE IS NO RECORD IN HIS
OFFICE THAT HE EVER SENT ME A COPY OF THIS ORDER.
THEREFORE THIS DEFAULT SHOULD NOT AND CANNOT BE
DISPUTED BY ANY MEANS.

THE AFFIDAVIT DISCLOSED BY CHARLES STORY CONDONES
MY DEMONSTRATION FOR CAUSE FOR DEFAULT.

ALL OF THE CLAIMS THAT I HAVE RAISED IN HABEAS CORPUS ALSO
 WAS RAISED OR RULE 32 BY AN SPAGE ADDITIONAL ISSUES.
 THESE PAGES WERE ADDED TO STEM AN MISCHARGE OF
 JUSTICE, DEALING WITH INEFFECTIVE ASSISTANCE OF COUNSEL
 MR. STEVE MORRIS NOT AT ANY TIME AT TRIAL DISPUTED
 THE CORROBORATE EVIDENCE AT THIS TRIAL. CONTRADICTIVE
 TESTIMONY OF CO-DEFENDANT. NO PHYSICAL EVIDENCE
 THAT I WAS IN THIS RESIDENCE BECAUSE CO-DEFENDANT
 BILLY NORRIS SAID THAT I BURGLARIZED THIS RESIDENCE
 BAREHANDED. JUDGE TOM YOUNG GAVE IN JURORS JURY INSTRUCTIONS
 HE INSTRUCTED THE JURY TO FIND ME GUILTY OF BURGLARY AND
 THAT AND NOT GUILTY OF RECEIVING STOLEN PROPERTY OR
 GUILTY OF RECEIVING STOLEN PROPERTY AND NOT GUILTY OF
 BURGLARY AND THAT. WHICH MEANS I WENT TO JURY TRIAL
 TO AUTOMATICALLY RECEIVE AN CONVICTION WHICH FALLS
 UP UNDER DOUBLE JEOPARDY. ALABAMA LAW IS WELL SETTED
 AND STATES THAT EVIDENCE TENDING TO PROVE THAT THE
 ACCUSED CAME INTO POSSESSION OF THE PROPERTY DESCRIBED
 IN THE INDICTMENT SOLELY THROUGH BURGLARIZATION OF
 A HOUSE WAS INSUFFICIENT TO AUTHORIZE A CONVICTION
 OF RECEIVING STOLEN GOODS. IT IS AN ELEMENTARY PRINCIPLE
 OF LAW THAT THE PRINCIPLE OF THAT, OR THE PERSON WHO
 ACTUALLY STEALS THE PROPERTY, CANNOT BE CONVICTED OF
 THE CRIME OF RECEIVING, CONCEALING, OR HIDING IN THE
 CONCEALMENT OF THE PROPERTY STOLEN. DAVIDSON VS. STATE
 360 So.2d 728
 (ALA.CRIM. APP. 1978.)

CLAIM THAT THERE IS INSUFFICIENT EVIDENCE TO
 SUPPORT THE JURYS VERDICT CANNOT BE REVIEWED
 ON APPEAL UNLESS THE APPELLANT HAS CHALLENGED SUCH
 EVIDENCE BY A MOTION TO EXCLUDE THE STATES EVIDENCE,
 MOTION FOR JUDGEMENT OF ACQUITTAL, REQUEST FOR THE
 AFFIRMATIVE CHARGE, OR THROUGH A MOTION FOR A NEW TRIAL
 FILED IN THE TRIAL COURT.

ENGLISH VS. STATE, 457 So.2d 458
 (ALA.CRIM. APP. 1984.)

IN CONCLUSION

PETITIONER IS VERIFYING THAT HE HAS MADE AN SUBSTANTIAL SHOWING OF THE DENIAL OF A CONSTITUTIONAL RIGHT AND THAT I DO DEMONSTRATE THAT MY PETITION INVOLVES ISSUES WHICH ARE DEBATABLE AMONG REASONABLE JURISTS THAT A COURT COULD RESOLVE THE ISSUE'S DIFFERENTLY, AND THE ISSUES ARE ADEQUATE ENOUGH TO DESERVE ENCOURAGEMENT TO PROCEED FURTHER. THEREFORE PETITIONER CONTINUES TO REQUEST FOR HABEAS RELIEF AS HE SO MUCH DESERVES. I HAVE MET THE OUTSTANDING BURDEN OF PROVING MULTIPLE DEFAULTS AND REQUEST RELIEF FOR THIS MISCARRIAGE OF JUSTICE

RESPECTFULLY,

Signature, Christopher C. McCullough
Christopher C. McCullough

PRO 'SE

CERTIFICATE OF SERVICE

I DO HEREBY CERTIFY THAT I HAVE SENT AN
EXACT, SAME COPY OF THE FOREGOING TO:

TROY KING

ATTORNEY GENERAL

11 SOUTH UNION STREET

MONTGOMERY, ALABAMA 36130-0152

By PLACING THE SAME IN THE
UNITED STATES MAIL, POSTAGE PAID

ON THIS DAY 30TH DAY OF JULY MONTH JULY 2007

RESPECTFULLY

Signature, Christopher C. McCullough
Christopher C. McCullough

PRO'SE